

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2236

AN ACT

AMENDING SECTIONS 48-701, 48-707, 48-709, 48-717, 48-719 AND 48-723, ARIZONA
REVISED STATUTES; RELATING TO COMMUNITY FACILITIES DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 48-701, Arizona Revised Statutes, is amended to
3 read:

4 48-701. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Clerk" includes any person or official who performs the duties of
7 clerk of the municipality or county or any person appointed by the district
8 board to be the district clerk pursuant to section 48-711, subsection D.

9 2. "County" means a county that forms a community facilities district
10 pursuant to this article in an unincorporated area or in an incorporated area
11 with the municipality's consent ~~for the sole purpose of financing school~~
12 ~~sites and facilities as prescribed in paragraph 12, subdivision (k) of this~~
13 ~~section.~~

14 3. "Debt service" means the principal of, interest on and premium, if
15 any, on the bonds, when due, whether at maturity or prior redemption and fees
16 and costs of registrars, trustees, paying agents or other agents necessary to
17 handle the bonds and the costs of credit enhancement or liquidity support.

18 4. "District" means a tax levying community facilities district formed
19 pursuant to this article by a municipality or formed pursuant to this article
20 by a county in an unincorporated area or in an incorporated area with the
21 municipality's consent ~~for the sole purpose of financing school sites and~~
22 ~~facilities as prescribed in paragraph 12, subdivision (k) of this section.~~

23 5. "District board" means the board of directors of the district,
24 which shall be comprised of the members of the governing body of the
25 municipality or county, ex officio, or, at the option of the governing body,
26 five directors appointed by the governing body under this article.

27 6. "Enhanced municipal services" means public service provided by a
28 COUNTY OR municipality within the district at a higher level or to a greater
29 degree than provided in the remainder of the COUNTY OR municipality,
30 including such services as public safety, fire protection, street or sidewalk
31 cleaning or landscape maintenance in public areas.

32 7. "General obligation bond" means a bond that is issued pursuant to
33 section 48-719 and that is secured by a pledge of ad valorem taxes levied by
34 the district.

35 8. "General plan" means the general plan described in section 48-702,
36 subsection B, as the plan may be amended.

37 9. "Governing body" means the body or board which by law is
38 constituted as the legislative department of the municipality or county.

39 10. "Municipality" means an incorporated city or town.

40 11. "Owner" means the person who, on the day the action, election or
41 proceeding is begun or held, appears to be the owner of real property as
42 shown on the property tax assessment roll.

43 12. "Public infrastructure" means all improvements listed in this
44 paragraph that will result in a beneficial use principally to land within the
45 geographical limits of the district and may include a district's share of any

1 improvements listed in this paragraph if the district board determines such
2 share is proportionate to the beneficial use of such improvements to land
3 within the geographical limits of the district, improvements within or
4 outside the geographical limits of the district, necessary or incidental
5 work, whether newly constructed, renovated or existing, and all necessary or
6 desirable appurtenances. For the purposes of this paragraph, adoption by the
7 district board of a resolution of intent pursuant to section 48-715 shall
8 conclusively establish that the improvements or, if applicable, share of the
9 improvements that are the subject of the resolution will result in a
10 beneficial use principally to land within the geographical limits of the
11 district. Public infrastructure improvements are:

12 (a) Sanitary sewage systems, including collection, transport, storage,
13 treatment, dispersal, effluent use and discharge.

14 (b) Drainage and flood control systems, including collection,
15 transport, diversion, storage, detention, retention, dispersal, use and
16 discharge.

17 (c) Water systems for domestic, industrial, irrigation, municipal or
18 fire protection purposes, including production, collection, storage,
19 treatment, transport, delivery, connection and dispersal, but not including
20 facilities for agricultural irrigation purposes unless for the repair or
21 replacement of existing facilities when required by other improvements
22 permitted by this article.

23 (d) Highways, streets, roadways and parking facilities, including all
24 areas for vehicular use for travel, ingress, egress and parking.

25 (e) Areas for pedestrian, equestrian, bicycle or other nonmotor
26 vehicle use for travel, ingress, egress and parking.

27 (f) Pedestrian malls, parks, recreational facilities other than
28 stadiums, and open space areas for the use of members of the public for
29 entertainment, assembly and recreation.

30 (g) Landscaping, including earthworks, structures, lakes and other
31 water features, plants, trees and related water delivery systems.

32 (h) Public buildings, public safety facilities and fire protection
33 facilities.

34 (i) Lighting systems.

35 (j) Traffic control systems and devices, including signals, controls,
36 markings and signage.

37 ~~(k) School sites and facilities with the consent of the governing~~
38 ~~board of the school district for which the site or facility is to be~~
39 ~~acquired, constructed or renovated.~~

40 ~~(l)~~ (k) Equipment, vehicles, furnishings and other personalty related
41 to the items listed in this paragraph.

42 13. "Public infrastructure purpose" means:

43 (a) Planning, design, engineering, construction, acquisition or
44 installation of public infrastructure.

- 1 (b) Acquiring, converting, renovating or improving existing facilities
2 for public infrastructure.
- 3 (c) Acquiring interests in real property for public infrastructure.
- 4 (d) Establishing, maintaining and replenishing reserves from any
5 source described in section 48-717 or from any other source in order to
6 secure payment of debt service on bonds.
- 7 (e) Notwithstanding section 48-589, funding and paying from bond
8 proceeds interest accruing on bonds for a period of not to exceed three years
9 from their date of issuance.
- 10 (f) Providing for the timely payment of debt service on bonds or other
11 indebtedness of the district.
- 12 (g) Refinancing any matured or unmatured bonds with new bonds.
- 13 (h) Incurring expenses of the district incident to and reasonably
14 necessary to carry out the purposes specified in this paragraph.
- 15 14. "Revenue bonds" means those bonds that are issued pursuant to
16 section 48-720 and THAT are secured by a pledge of revenues of the district
17 or revenues collected by the COUNTY OR municipality and returned to the
18 district.
- 19 15. "Treasurer" includes any person or official who performs the duties
20 of treasurer of the municipality or county or any person appointed by the
21 district board as the district treasurer pursuant to section 48-711,
22 subsection D.
- 23 Sec. 2. Section 48-707, Arizona Revised Statutes, is amended to read:
24 48-707. Notice and conduct of elections; waiver
- 25 A. Any election under this article shall be a nonpartisan election
26 called by posting notices in three public places within the boundaries of the
27 district not less than twenty days before the election. Notice shall also be
28 published in a newspaper of general circulation in the municipality or county
29 or if there is no newspaper so circulated in the municipality in a newspaper
30 of general circulation in the county in which the municipality is located
31 once a week for two consecutive weeks before the election. The notice shall
32 state:
- 33 1. The place of holding the election.
- 34 2. The hours during the day, not less than six, in which the polls
35 will be open.
- 36 3. If it is a formation election, the boundaries of the proposed
37 district.
- 38 4. If it is a bond election, the amount of bonds to be authorized for
39 the district, the maximum rate of interest to be borne on the bonds, the
40 maximum term of the bonds, not exceeding twenty-five years, and the purposes
41 for which the monies raised will be used.
- 42 5. If it is an ad valorem tax levy election pursuant to section
43 48-723, the maximum tax rate per one hundred dollars of assessed valuation to
44 be imposed, the purposes for which the monies raised will be used and the
45 existing maximum tax rate, if any.

1 6. That a general plan is on file with the clerk.

2 B. The district board or the governing body, as applicable, shall
3 determine the date of the election and the polling places for the election
4 and may consolidate county precincts. For other than a formation election
5 pursuant to section 48-705, subsection B, and an election held pursuant to
6 subsection G of this section, precinct registers shall be used. The county
7 recorder shall submit precinct registers on the request of the clerk, and if
8 the district includes land lying partly in and partly out of any county
9 election precinct, the precinct registers may contain the names of all
10 registered voters in the precinct and the election boards at those precincts
11 shall require that a prospective elector execute an affidavit stating that
12 the elector is also a qualified elector of the district. For formation
13 elections and elections held pursuant to subsection G of this section, a
14 prospective elector shall execute an affidavit stating that the elector is
15 the owner of land in the proposed district and is a qualified elector of this
16 state or otherwise qualified to vote pursuant to section 48-3043 and stating
17 the area of land in acres owned by the elector. Election board members may
18 administer oaths or take all affirmations for these purposes. A community
19 facilities district election held pursuant to this article is not subject to
20 title 16, chapter 2, article 3.

21 C. Except as otherwise provided by this article, the election shall
22 comply with the general election laws of this state, except that the words to
23 appear on the ballots shall be for a formation election "district, yes" and
24 "district, no", for a bond election "bonds, yes" and "bonds, no", for a tax
25 election if no tax is in place "tax, yes" and "tax, no" and for a tax
26 election to change an existing maximum or eliminate an existing tax "tax
27 change, yes" and "tax change, no". The returns of election shall be made to
28 the governing body or, if after formation, to the district board.

29 D. Within fourteen days after an election, the governing body, or if
30 after formation, the district board, shall meet and canvass the returns, and
31 if a majority of the votes cast at the election is in favor of formation,
32 issuing the bonds, imposing the tax or changing the tax, the governing body
33 or the district board, as appropriate, shall enter that fact on its minutes.
34 The canvass may be continued from time to time. Failure of a majority to
35 vote in favor of the matter submitted does not prejudice the submission of
36 the same or similar matters at a later election.

37 E. If a person listed on the assessment roll is no longer the owner of
38 land in the district and the name of the successor owner becomes known and is
39 verified by recorded deed or other similar evidence of transfer of ownership,
40 the successor owner is deemed to be the owner for the purposes of this
41 article.

42 F. Notwithstanding any other provision of this article, if a petition
43 for formation is signed by owners of all of the land in the district
44 described in the petition and is approved by the municipality or county, the
45 municipality or county may waive any or all requirements of posting,

1 publication, mailing, notice, hearing and landowner election. On receipt of
2 such a petition, and after approval by an election of resident electors, if
3 any, the municipality or county shall declare the district formed without
4 being required to comply with the provisions of this article for posting,
5 publication, mailing, notice, hearing or landowner election.

6 G. Notwithstanding any other provision of this article, if no person
7 has registered to vote within the district within fifty days immediately
8 preceding any scheduled election date, any election required to be held
9 pursuant to this article shall be held with the vote by the owners of land
10 within the district who are qualified electors of this state and other
11 landowners according to section 48-3043. Each owner has the number of votes
12 or portion of votes equal to the number of acres or portion of acres rounded
13 upward to the nearest one-fifth of an acre owned in the district by that
14 person.

15 H. FOR A DISTRICT THAT IS PROPOSED TO BE FORMED BY A COUNTY, A
16 DISTRICT MAY BE FORMED ONLY IF A PETITION FOR FORMATION IS SIGNED BY THE
17 OWNERS OF ALL OF THE LAND IN THE DISTRICT THAT IS DESCRIBED IN THE PETITION
18 AND IF IT IS APPROVED BY THE COUNTY. IF THE DISTRICT IS PROPOSED TO BE
19 FORMED IN A COUNTY ISLAND, AS DEFINED IN SECTION 11-251.12, IN EXISTENCE ON
20 THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE PETITION MUST BE
21 SIGNED BY THE OWNERS OF ALL OF THE LAND IN THE DISTRICT THAT IS DESCRIBED IN
22 THE PETITION AND THE DISTRICT MUST BE APPROVED BY THE COUNTY AND BY THE
23 MUNICIPALITY OR ALL MUNICIPALITIES THAT FORM THE COUNTY ISLAND. IF THE
24 PETITION IS SIGNED BY THE OWNERS OF ALL OF THE LAND IN THE DISTRICT, THE
25 COUNTY MAY WAIVE ANY OR ALL REQUIREMENTS OF POSTING, PUBLICATION, MAILING,
26 NOTICE, HEARING AND LANDOWNER ELECTION. ON RECEIPT OF SUCH A PETITION, AND
27 AFTER APPROVAL BY AN ELECTION OF ONE HUNDRED PER CENT OF THE RESIDENT
28 ELECTORS, IF ANY, THE COUNTY SHALL DECLARE THE DISTRICT FORMED WITHOUT BEING
29 REQUIRED TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE FOR POSTING.

30 Sec. 3. Section 48-709, Arizona Revised Statutes, is amended to read:

31 48-709. Powers of a community facilities district

32 A. In addition to the powers otherwise granted to a district pursuant
33 to this article, a district may to further the general plan:

34 1. Enter into contracts and expend monies for any public
35 infrastructure purpose with respect to the district.

36 2. Enter into intergovernmental agreements as prescribed in title 11,
37 chapter 7, article 3 for the planning, design, inspection, ownership,
38 control, maintenance, operation or repair of public infrastructure or the
39 provision of enhanced municipal services by the municipality in the district.

40 3. Sell, lease or otherwise dispose of district property if the sale,
41 lease or conveyance is not a violation of the terms of any contract or bond
42 resolution of the district.

43 4. Reimburse the municipality for providing enhanced municipal
44 services in the district.

45 5. Operate, maintain and repair public infrastructure.

- 1 6. Establish, charge and collect user fees, rates or charges for the
2 use of any public infrastructure or service.
- 3 7. Employ staff, counsel and consultants.
- 4 8. Reimburse the municipality or county for staff and consultant
5 services and support facilities supplied by the municipality or county.
- 6 9. Accept gifts or grants and incur and repay loans for any public
7 infrastructure purpose.
- 8 10. Enter into agreements with landowners and the municipality or
9 county for the collection of fees and charges from landowners for public
10 infrastructure purposes, the advance of monies by landowners for public
11 infrastructure purposes or the granting of real property by the landowner for
12 public infrastructure purposes.
- 13 11. By resolution, levy and assess the costs of any public
14 infrastructure purpose on any land benefited in the district.
- 15 12. Pay the financial, legal and administrative costs of the district.
- 16 13. Enter into contracts, agreements and trust indentures to obtain
17 credit enhancement or liquidity support for its bonds and process the
18 issuance, registration, transfer and payment of its bonds and the
19 disbursement and investment of proceeds of the bonds.
- 20 14. With the consent of the governing body of the municipality or
21 county which formed the district, enter into agreements with persons outside
22 of the district to provide services to persons and property outside of the
23 district.
- 24 15. Use public easements and rights-of-way in or across public
25 property, roadways, highways, streets or other thoroughfares and other public
26 easements and rights-of-way, whether in or out of the geographical limits of
27 the district, the municipality or the county.
- 28 B. This article does not authorize:
 - 29 1. A district to acquire, construct, operate or maintain an electric
30 generation or distribution system or natural gas distribution system without
31 the written consent of any affected public service corporation, electric
32 cooperative, agricultural improvement or power district or other district
33 described in article XIII, section 7, Constitution of Arizona, the service
34 area of which encompasses all or part of the district, if that entity is
35 providing or is capable of adequately providing electrical utility service or
36 natural gas utility service in the district.
 - 37 2. A district to provide service outside its boundaries without the
38 written consent of any affected public service corporation, electric
39 cooperative, agricultural improvement or power district or other district
40 described in article XIII, section 7, Constitution of Arizona, with a service
41 area that lies outside of the district, if that entity is providing or is
42 capable of adequately providing electrical utility service or natural gas
43 utility service in the area that the district proposes to serve.
- 44 C. If a district is granted written consent pursuant to this section,
45 the district shall provide a copy to the governor, the president of the

1 senate, the speaker of the house of representatives and each commissioner of
2 the Arizona corporation commission no later than thirty days after consent is
3 granted.

4 D. In connection with any power authorized by statute, the district
5 may:

- 6 1. Contract.
- 7 2. Enter into intergovernmental agreements pursuant to title 11,
8 chapter 7, article 3.
- 9 3. Adopt and change a seal.
- 10 4. Sue and be sued.
- 11 5. Enter into development agreements, as defined in section 9-500.05.
- 12 6. Exercise the same right and power of eminent domain as a public
13 service corporation pursuant to title 12, chapter 8, articles 2 and 3 to
14 acquire any property or right-of-way, except political subdivision, county,
15 state or federal property, for any public infrastructure purpose.

16 E. A district which proposes to provide domestic water service in the
17 certificated area of a public service corporation serving domestic water
18 shall provide just compensation to the public service corporation pursuant to
19 section 9-516.

20 F. Public infrastructure other than personalty may be located only in
21 or on lands owned by the state, a county, a municipality or the district or
22 dedicated or otherwise designated as public roadways, highways, streets,
23 thoroughfares, easements or rights-of-way, whether in or out of the district
24 or the municipality. Personalty may be used only for purposes authorized by
25 the district board. ~~School sites and facilities, by agreement, may be~~
26 ~~transferred to a school district.~~

27 G. An agreement pursuant to subsection A, paragraph 10 of this section
28 may include agreements to repay all or part of such advances, fees and
29 charges from the proceeds of bonds if issued or from advances, fees and
30 charges collected from other landowners or users or those having a right to
31 use any public infrastructure. A person does not have authority to compel
32 the issuance or sale of the bonds of the district or the exercise of any
33 taxing power of the district to make repayment under any agreement.

34 H. A district shall not contract with a municipality for enhanced
35 municipal services unless the area for which the services are to be provided
36 is designated by the municipality as a slum or blighted area pursuant to
37 title 36, chapter 12, or an urban core business district of the municipality
38 determined by formal resolution of the municipality to be in need of enhanced
39 municipal services to encourage or preserve commercial development in the
40 area.

41 I. Notwithstanding title 34 or article 2 of this chapter, the district
42 at the option of the district board may enter into contracts for the
43 performance of district projects with landowners in the district after
44 calling for bids but before publishing notice of the award of a contract if
45 all of the following conditions are met:

1 1. The landowner or landowners own three-fourths or more of the total
2 land area of the district.
3 2. The landowner or landowners contract to perform the work at a cost
4 which does not exceed the cost specified in the bid of the bidder who would
5 have been awarded that bid.
6 3. The work for which the contract was let is to be financed pursuant
7 to this article.
8 4. All contracts and work executed pursuant to this section are
9 subject to those rules as the district board may prescribe.
10 Sec. 4. Section 48-717, Arizona Revised Statutes, is amended to read:
11 48-717. Finances
12 ~~A. Except as provided in subsection B of this section,~~ The projects to
13 be constructed or acquired as shown in the general plan may be financed from
14 the following sources of revenue:
15 1. Proceeds received from the sale of bonds of the district.
16 2. Monies of the municipality or county contributed to the district.
17 3. Annual tax levies.
18 4. Special assessments.
19 5. State or federal grants or contributions.
20 6. Private contributions.
21 7. User, landowner and other fees and charges.
22 8. Proceeds of loans or advances.
23 9. Any other monies available to the district by law.
24 ~~B. A district formed by a county shall not levy an ad valorem tax~~
25 ~~pursuant to section 48-723 or issue general obligation bonds pursuant to~~
26 ~~section 48-719.~~
27 Sec. 5. Section 48-719, Arizona Revised Statutes, is amended to read:
28 48-719. General obligation bonds; tax levy
29 A. At any time after the hearing on formation of the district, the
30 district board, or, if before formation, the governing body, may from time to
31 time order and call a general obligation bond election to submit to the
32 qualified electors of the district or to those persons who are qualified to
33 vote pursuant to section 48-707, subsection G the question of authorizing the
34 district board to issue general obligation bonds of the district to provide
35 monies for any public infrastructure purposes consistent with the general
36 plan. The election may be held in conjunction with the formation election.
37 B. If general obligation bonds are approved at an election, the
38 district board may issue and sell general obligation bonds of the district.
39 C. If the bonds are to be sold in a public offering, no bonds may be
40 issued by the district unless the bonds receive one of the four highest
41 investment grade ratings by a nationally recognized bond rating agency.
42 D. The district may issue and sell refunding bonds to refund any
43 general obligation bonds of the district. If general obligation bonds are
44 issued to refund any general obligation bonds of the district no election on
45 the issuance of such refunding bonds is required.

1 E. After the bonds are issued, the district board shall enter in its
2 minutes a record of the bonds sold and their numbers and dates and shall
3 annually levy and cause an ad valorem tax to be collected, at the same time
4 and in the same manner as other taxes are levied and collected on all taxable
5 property in the district, sufficient, together with any monies from the
6 sources described in section 48-717, to pay debt service on the bonds when
7 due. Monies derived from the levy of the tax provided in this section when
8 collected constitute funds to pay the debt service on the bonds and shall be
9 kept separately from other funds of the district.

10 ~~F. A district formed by a county shall not call a general obligation~~
11 ~~bond election or issue general obligation bonds.~~

12 Sec. 6. Section 48-723, Arizona Revised Statutes, is amended to read:
13 48-723. District taxes; annual financial estimate and budget

14 A. Except as provided in subsection D of this section and at any time
15 after the hearing on formation of the district, the district board, or, if
16 before formation, the governing body, may call an election to submit to the
17 qualified electors of the district or to the persons qualified to vote
18 pursuant to section 48-707, subsection G the question of authorizing the
19 district board to levy an ad valorem tax on the assessed value of all the
20 real and personal property in the district at a rate or rates which do not
21 exceed the maximum rate or rates specified in the ballot. All taxes
22 attributable to the operation and maintenance expenses of the district,
23 excluding expenses for an area described in section 48-709, subsection G,
24 shall not exceed an amount equal to thirty cents per one hundred dollars of
25 assessed valuation for all real and personal property in the district, unless
26 a higher rate is approved by a vote of the electors of the district, or by
27 the persons who are qualified to vote as provided in section 48-707,
28 subsection G, voting at an election not less than three years after the date
29 of the formation of the district. The election may be held in conjunction
30 with the formation election. Once approved at an election, the maximum rate
31 remains in effect until increased or decreased at a subsequent election. If
32 a maximum rate is in effect, the district board, on petition of twenty-five
33 per cent of the qualified electors of the district, or by those persons
34 owning twenty-five per cent of the land area who are qualified to vote
35 pursuant to section 48-707, subsection G, shall call an election to reduce
36 the maximum tax rate but not below the lesser of that rate determined by the
37 district board to be necessary to maintain the district's facilities and
38 improvements or the actual rate then in effect. On the presentation to the
39 district board of a petition signed by the owners of a majority of the
40 property in the district, the district board shall adopt a resolution to
41 reduce or eliminate the portion of the tax, beginning the next fiscal year,
42 required for one or more enhanced municipal services specified in the
43 petition. Signatures on a petition to reduce or eliminate a tax are valid
44 for a period of sixty days.

1 B. The district may not levy, other than for the payment of debt
2 service on general obligation bonds, at a rate or rates in excess of the
3 maximum rate then in effect.

4 C. When levying an ad valorem tax, the district board shall make
5 annual statements and estimates of the operation and maintenance expenses of
6 the district, the costs of capital improvements to be financed by the tax
7 levy or levies and the amount of all other expenditures for public
8 infrastructure and enhanced municipal services proposed to be paid from the
9 tax levy or levies and of the amount to be raised to pay general obligation
10 bonds of the district, all of which shall be provided for by the levy and
11 collection of ad valorem taxes on the assessed value of all the real and
12 personal property in the district. The district board shall file the annual
13 statements and estimates with the clerk. The district board shall publish a
14 notice of the filing of the estimate, shall hold hearings on the portions of
15 the estimate not relating to debt service on general obligation bonds and
16 shall adopt a budget. The board, on or before the date set by law for
17 certifying the annual budget of the COUNTY OR municipality, shall fix, levy
18 and assess the amounts to be raised by ad valorem taxes of the district and
19 shall cause certified copies of the order to be delivered to the board of
20 supervisors and to the department of revenue. All statutes relating to the
21 levy and collection of general county taxes, including the collection of
22 delinquent taxes and sale of property for nonpayment of taxes, apply to the
23 district taxes provided for by this section.

24 ~~D. A district formed by a county shall not levy an ad valorem tax.~~